IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21365 of 2006

For Approval and Signature:
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PAREKH PLANTIUM LTD. - Petitioner(s)
Versus
SHARAD JATASHANKER BHATT - Respondent(s)

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Appearance :
MR KISHOR M PAUL for Petitioner(s) : 1,
MR UT MISHRA for Respondent(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 19/03/2007

ORAL JUDGMENT

Heard the learned advocates.

The petitioner M/s.Parekh Platinum Limited – employer challenges the judgment and order dated 18th July, 2006 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter

referred to as, **“the Act”**) in Gratuity Appeal No.38/2005.

Pursuant to his application made on 11th September, 1999, by order dated 24th September, 1999 made by the petitioner, the respondent-workman was appointed as a Machine Operator. He joined the duty on 25th October, 1999. After serving for nearly five years, on 4th August, 2004 the respondent resigned from service. His resignation was accepted on 11th August, 2004 and he was relieved on the same day.

As the respondent was not paid the gratuity, he filed Gratuity Application No.23/2005 before the Controlling Authority under the Act. Before the Controlling Authority, the respondent maintained that he was appointed on 1st July, 1999 and that he had resigned from service on 11th August, 2004; that he had completed five years' service. The said plea was supported by the respondent by his oral evidence. According to him, even prior to his appointment on 24th September, 1999 he was engaged by the petitioner since 1st July, 1999. The respondent had thus

completed more than five years' service under the petitioner. He was, therefore, entitled to the gratuity under the Act.

The Application was contested by the petitioner. According to the petitioner, the respondent was appointed on 24th September, 1999 and that he had joined service on 25th October, 1999. On the date he was relieved from service he had not completed five years' service. In absence of such service, he was not entitled to the benefit of gratuity under the Act. The said plea was supported by the documentary evidence viz. application, appointment order and joining report.

Except the bare statement made by the respondent, there is no evidence on record to suggest that the respondent had joined the service on 1st July, 1999 as alleged. Nevertheless, the Controlling Authority, by its judgment and order dated 29th August, 2005, held that the respondent was entitled to gratuity in the sum of Rs.11,284=00. The said order has been confirmed by the Appellate Authority

in the above referred Appeal.

Section 4 of the Act provides, inter alia, that **"the gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years."** In the present case, the evidence on record suggests that on the date of his resignation, the respondent had not rendered continuous service for not less than five years. The finding of fact to the contrary recorded by the Controlling Authority and confirmed by the Appellate Authority is not supported by evidence on record. As the respondent had not completed five years' continuous service, he was not entitled to the gratuity under the Act. Both the authorities below have erred in directing the petitioner to pay the gratuity to the respondent.

In above view of the matter, the petition is allowed. The impugned judgment and order dated 18th July, 2006 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 in Gratuity Appeal

No.38/2005 is quashed and set-aside. The Gratuity Application No.23/2005 filed by the respondent stands rejected. Rule is made absolute. The parties shall bear their own cost. The petitioner will be at liberty to withdraw the amount deposited with the Controlling Authority.

(Ms. R.M.Doshit, J.)

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